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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,526	12/08/2003	Yoshikazu Majima	OMRNP069	3713
22434	7590	10/04/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			PYO, KEVIN K	
P.O. BOX 70250			ART UNIT	
OAKLAND, CA 94612-0250			PAPER NUMBER	
			2878	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EK

Office Action Summary

Application No.

10/731,526

Applicant(s)

MAJIMA ET AL.

Examiner

Kevin Pyo

Art Unit

2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|--|--|

Election/Restrictions

1. Applicant's election without traverse of species I (claims 1-4 and 9) in the reply filed on 6/2/2005 is acknowledged. The non-elected claims (5-8 and 10) should be canceled in order to expedite the prosecution.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Komma et al (5,687,153).

Regarding claim 1, Komma et al shows in Fig.1 the following elements of applicant's invention: a) a light emitting optical system having a light emitting element (2) that emits an expanding beam of light with a fixed gate angle (Fig.1), a first polarizer (173) and a light emitting lens (4) arranged sequentially; b) a light receiving optical having a light receiving lens (4), a second polarizer (173) and a light receiving element system (74a, 74b) arranged sequentially; and c) a phase shifter (15) inserted between said first polarizer and said light emitting lens, wherein said first polarizer and said second polarizer have mutually perpendicular polarizer axes (col.9, lines 34-37).

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Regarding claim 9, Komma et al shows in Fig.1 the following elements of applicant's invention: a) a light emitting optical system having a light emitting element (2) that emits an expanding beam of light with a fixed gate angle (Fig.1), a first polarizer (173) and a light emitting lens (4) arranged sequentially; b) a light receiving optical having a light receiving lens (4), a second polarizer (173) and a light receiving element system (74a, 74b) arranged sequentially, said first polarizer and said second polarizer having mutually perpendicular polarizer axes (col.9, lines 34-37); and c) means (15) disposed between said first polarizer and said light emitting lens for canceling the total rotation of the polarization plane that is the sum of rotations caused by passing through said first polarizer and said light emitting lens.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komma et al.

Regarding claim 2, it would have been obvious to one of ordinary skill in the art to replace the phase shifter (15) of Komma et al with a pair of phase shifters each corresponding to a light beam emitting from a light source and a reflected light beam from a reflector (14), respectively in view of the desire to prevent the reflected light beam from interfering with the light emitting beam.

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Regarding claim 3, depending the desired performance and design requirements, the specific phase shift would have been an obvious design choice within the skill of a person of ordinary skill in the art depending on the needs of the particular application.

Regarding claim 4, a lens (4) of Komma et al acts as both a light emitting lens and a emitting lens. It should be noted that process step is not given any patentable weight in product-by process claim and determination of patentability is based on the product itself.

Response to Arguments

6. Applicant's arguments filed on 9/15/2005 have been fully considered but they are not persuasive.

Applicant argues that applicant's claims are allowable over the prior art (i.e. Komma) because "the phase shifter and the polarizers of Komma are not combined for such a purpose and do not function as required by Komma". However, the examiner disagrees with the applicant's arguments. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). It should be noted that it is the claims that define the claimed invention and it is claims, not specification that are anticipated or unpatentable.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Pyo whose telephone number is (571) 272-2445. The examiner can normally be reached on Mon-Fri (with flexible hour), First Mon. off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin Pyo
Primary Examiner
Art Unit 2878

Pkk
10/3/05